

CITIZEN'S
GUIDE
TO
SMALL CLAIMS

This guide has been reviewed and approved by the
McLean County Bar Association.

CITIZEN'S GUIDE TO SMALL CLAIMS

This guide is intended to give you the information you may need if you are filing suit or named as a defendant in Small Claims Court. It is provided to help you through your Small Claims case.

Because of the nature of the Small Claims Court, many litigants choose to represent themselves. If you need legal advice or help, consult a lawyer.

NO EMPLOYEE OF THE CIRCUIT CLERK'S OFFICE IS ALLOWED TO GIVE LEGAL ADVICE. This guide is not a substitute for legal advice.

The Small Claims Court is a part of the McLean County Circuit Court. It is specifically designed to hear those cases involving claims of \$5,000.00 or less. This may be for damages to an automobile, back wages, rent or for any reason when the defendant owes money to the plaintiff and has refused to pay.

IMPORTANT: Small Claims Court can order a judgment only for money. It cannot require a person or business to perform a service, to stop a certain action or to return property.

Should I File?

A Small Claims case is a way to collect money owed. However, not everyone who owes money can be required to pay. Since actually collecting your money is your goal you should consider the following before you file:

- The cost to file and pursue your case.
- The time the case will take, along with the value of your time.
- The likelihood that you can collect a judgment from the defendant.

You should understand that, for a variety of reasons, you may “win” your case but not be able to collect your judgment. For example, many debts can be discharged in bankruptcy, or the defendant’s only assets may be legally protected.

REMEMBER: Once a Small Claims complaint is filed in the Circuit Clerk's office, the fees are not refundable.

How Do I Start A Small Claims Case?

To begin an action, a complaint and a praecipe must be filed in the Small Claims division of the Circuit Clerk's office on the 4th floor of the Law and Justice Center (104 West Front Street, Bloomington, IL 61701, 309-888-5330.)

A **complaint** is a document explaining who is suing whom; where each person lives; how much money is owed; and, why the money is owed. The **person filing** is called the **plaintiff**. The defendant is the person whom the plaintiff is suing.

A **praecipe** is a written document instructing the issuance of a specified writ.

Complete the praecipe and Small Claims complaint forms carefully and attach all written documents upon which your claim is based. The staff will be happy to answer your questions about completing these forms.

Upon receipt of the appropriate filing fee, the Clerk will set an “appearance date.” The appearance date sets the date, time and courtroom where the plaintiff and defendant must first appear. These dates are set Thursday mornings at 9:00 a.m. and are approximately 30 to 40 days from the date your complaint is filed (dates and time are subject to change.)

FEES: The filing fee is \$54.00 for cases under \$500.00 and \$69.00 for cases over \$500.00 through \$5,000.00. (These fees are subject to change.)

If you cannot afford the filing fee, you can ask that it be waived. The Clerk can provide a form for you to fill out, listing your income, assets and liabilities. When you have completed this form, the Clerk will give the form to a judge. If the judge approves the request, you will be excused from paying the fee or other court costs, including the costs of service of the summons.

SUMMONS: By issuing a Summons, the court informs the defendant of the plaintiff's claim and provides notice of the date and time the defendant must appear in court to answer the claim. The Clerk issues the summons and delivers it to the Sheriff's office or mails it to the defendant by certified mail (McLean County only.)

If there is more than one defendant, request that the Clerk issue a summons to each defendant. If it is not possible to serve a summons on a defendant and the defendant does not voluntarily appear, the plaintiff cannot receive a judgment against that defendant.

When the Sheriff's office is requested to serve the summons, a bill for the cost of this service will be provided to the plaintiff. This must be paid upon receipt. Sheriff will not return service to the Court if the fee is not paid. If the Clerk's office serves the summons by certified mail (McLean County only), the cost of the service is \$5.00 per defendant (\$8.80 beginning January 1, 2002.)

I've Been Sued; What Do I Do?

If you are sued, you will be notified when you receive a copy of the Small Claims complaint and summons in one of two ways: 1) by certified mail; 2) by hand delivery from the sheriff or private process

server, to you or a household member of your family over the age of thirteen.

The complaint will tell you the reason you are being sued and the amount claimed. The summons will tell you the date and time you are to appear in court. DO NOT ignore the summons. If you do nothing in response to the summons, the Court will probably award the plaintiff the amount claimed in the complaint plus court costs.

When sued, you may choose to do any of the following:

- Appear on the return date and time and advise the Court whether you admit or deny the claim;
- File a written answer with the Clerk before the return date denying you owe the plaintiff all or part of the amount claimed by filing an appearance form and paying the appropriate appearance fee with the Clerk before the return date;
- If you believe the plaintiff owes you money in connection with the reason he claims you owe him money, file a lawsuit (called a counterclaim) against the plaintiff and pay the appropriate fee;
- Settle the dispute out of court.

What Happens In Court?

THE JUDGE'S ROLE: The judge must be fair to both parties in the case and can discuss the case only when both parties are present before the court. The judge cannot discuss the case with you either before the trial or after a decision has been made.

BOTH PARTIES APPEAR PERSONALLY: This is true unless the party is represented by an attorney. A friend or spouse may not appear in court for you unless that person is an attorney.

WHEN ONE PARTY DOES NOT SHOW UP: If the defendant has been served with the summons and does not appear, or if the defendant appears and admits he or she owes the amount claimed by the plaintiff, the judge decides the case for the plaintiff and the plaintiff receives a “judgment” against the defendant for the amount claimed. If the plaintiff does not appear on the appearance date, the judge dismisses the case.

BENCH TRIAL: Sometimes the defendant may wish to “answer” the complaint by filing a written response with the court before the first appearance date and paying the appropriate fee. If this is done, the judge may set the case over to a new date, the bench trial date.

Have all your witnesses and any papers, records or photographs with you in court.

After hearing both sides, the judge will, based upon the law and the facts, reach a decision and enter a judgment for either the plaintiff or for the defendant. Sometimes the judge may take the case “under advisement.” That means the judge will make a decision later and mail copies of the decision to each party. If the judgment is for the defendant, the case is dismissed. If the judgment is for the plaintiff, the judge’s decision sets the amount the defendant owes.

What Can Be Done After The Judgment Has Been Rendered?

- If a judgment of default was rendered at the first appearance, the defendant can file a motion to vacate within thirty (30) days. A motion to vacate should explain why the defendant failed to appear. Good cause must be shown.
- After the trial is over, either party may file a motion to reconsider. The same judge who heard the original case must also hear the request to reconsider the judgment. When preparing the motion the petitioner must explain the specific mistake made by the judge when making the decision.

- A judgment can be appealed to the Fourth District Appellate Court. This is a completely different proceeding and requires a separate filing by the petitioner.

Once the judge has entered a judgment in the case, it is up to the plaintiff, not the judge or the Circuit Clerk's office, to collect the money. The judgment does not require the defendant to pay anything.

After the case is settled or the judgment is paid, the plaintiff should close the case by signing the necessary forms, which are available from the Clerk.

Am I Required To Have A Lawyer?

No. Small Claims court is set up so that you do not need a lawyer. Many parties do use lawyers, but that should not intimidate you. Please note, however, that only individuals can represent themselves. Someone who is not a lawyer cannot represent you or another party in court.

If you want a lawyer, you should hire one before the trial date so the lawyer has time to prepare. A "continuance" or postponement is not allowed without a good reason. If you want a jury trial instead of a bench trial by a judge, it is usually a good idea to have a lawyer.

Can I Have a Jury Trial?

YES. However, before you decide, there are a few facts you should know:

- A jury trial takes more time than a bench trial.
- A bench trial is less formal. You are at less of a disadvantage at a bench trial if you do not know legal procedure.
- If you decide to have a jury trial, **you must formally demand a jury at the time the complaint is filed**; otherwise, you will waive your

right to demand a jury trial. The defendant must make a demand for a jury trial at the time the answer is filed or on the first appearance before the court if no answer is filed.

- You and the other party will participate in the jury selection process.
- The party who requests the jury trial pays the additional \$25.00 for a twelve-person jury or \$12.50 for a six-person jury.
- If you do not have a lawyer, you will be expected to handle your own case in much the same way as a lawyer would handle it for you.
- Usually, people lacking legal training do not have the knowledge and experience to properly conduct a jury trial and, therefore, may actually be at a disadvantage.

REMEMBER: FEES PAID TO THE CIRCUIT CLERK'S OFFICE IN THE COURSE OF YOUR CASE ARE NOT REFUNDABLE.

Definitions

Affidavit:	A written statement made by a person who swears the statement is true.
Complaint:	A paper that tells the defendant that the plaintiff has filed a lawsuit against him or her; why she or he is being sued; and how much money the plaintiff claims she or he owes.
Costs:	Fees the county charges for filing the lawsuit and serving the summons and complaint.
Default Judgment:	A judgment entered by the court against a party who does not show up at the trial or hearing. If this happens, the court is required to decide the case for the party who is present in court.
Judgment:	A court order that decides the case. The judgment will either dismiss the case or set the amount of money one side owes the other.
Party:	The person who is suing (<i>Plaintiff</i>) and the person who is being sued (<i>Defendant</i>) are called parties.
Service:	The way the defendant receives the complaint and summons. These papers will be delivered to (“served on”) the defendant; by certified mail; hand-delivered by the Sheriff’s office; or by a private process server.
Settlement:	An agreement that the parties make to resolve a claim so they will not have to have a trial.
Summons:	A paper that tells the defendant that she or he must appear before the court and gives the time and place to appear.
Writ:	A formal legal order or document.